

CIVIL SERVICE COMMISSION MINUTES

December 6, 2000

A regular meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Mary Gwen Brummitt
Roy Dixon
Gordon Austin
Barry I. Newman

Absent was:

Sigrid Pate

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

CIVIL SERVICE COMMISSION MINUTES
December 6, 2000

1:15 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
11,14,15,16,17	10,17		4

COMMENTS Motion by Newman to approve all items not held for discussion; seconded by Austin. Carried.

CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda

A. Commissioner Pate: Richard Pinckard, Esq. on behalf of **David Schultz**, Deputy Sheriff, appealing an Order of Suspension and Charges from the Sheriff's Department.

B. Commissioner Austin: Daniel Morales, S.E.I.U. Local 2028, on behalf of **Karl Rosenkranz**, Building Maintenance Engineer, appealing an Order of Suspension and Charges from the Department of General Services.

C. Commissioner Brummitt: **Robert Mutch**, former Audio Visual Specialist, appealing an Order of Termination and Charges from the Health and Human Services Agency.

D. Commissioner Brummitt: Maury Mills, Esq., on behalf of **Linda Hearn**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

E. Commissioner Newman: Frank S. Clowney, Esq. on behalf of **Thomas Eret**, former Building Maintenance Engineer, appealing an Order of Removal and Charges from the Department of General Services.

F. Commissioner Dixon: Sanford Toyen, Esq., on behalf of **Paul LaCroix**, Deputy Sheriff, appealing an alleged disciplinary reassignment with the Sheriff's Department. (Interim report on pre-hearing conference.)

REGULAR AGENDA
County Administration Center, Room 358

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and it is approved by the President of the Commission.

MINUTES

1. Approval of the Minutes of the regular meeting of November 1, 2000.

Approved.

CONFIRMATION OF ASSIGNMENTS

2. Commissioner Austin: Stewart Kocivar, S.E.I.U. Local 535, on behalf of **Luis Estrada**, former Eligibility Technician, appealing an Order of Removal and Charges from the Health and Human Services Agency.

Confirmed.

3. Commissioner Dixon: James Gattey, Esq., on behalf of **James Nick Phillips**, former Deputy Probation Officer, appealing an Order of Removal from the Department of Probation.

Confirmed.

WITHDRAWALS

4. Commissioner Austin: Daniel Morales, S.E.I.U. Local 2028, on behalf of **Thomas Vierling**, Booking Clerk, appealing an Order of Demotion and Charges from the Sheriff's Department.

Withdrawn.

DISCIPLINES

Findings

5. Commissioner Pate: Richard Pinckard, Esq., on behalf of **David Schultz**, Deputy Sheriff, appealing an Order of Suspension and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Discourteous Treatment of the Public; Cause II - Incompetency; Cause III - Failure of Good Behavior; Cause IV - Failure of Good Behavior; and Cause V - Acts which are Incompatible with and/or Inimical to the Public Service.

Employee has been a Deputy Sheriff for 12 years with two prior incidents of discipline which relate to courtesy and unbecoming conduct. The following facts were established with testimony and evidence at the hearing: While off duty, Employee drove to the grocery store and encountered two adult males parked in the adjacent stall smoking marijuana. The encounter quickly escalated to a loud and violent confrontation. As the encounter ensued, Employee was spat at, punched

and at the end of the confrontation, when Employee drew his gun, the men left the scene. Thereafter, they telephoned 911 emergency line to report the incident, but it was later proved that their account was dishonest, including the fact that they were in possession and use of marijuana. Portions of the incident were witnessed by at least 3 bystanders.

The witnesses saw the confrontation while under the perception that it was an argument between private citizens. Additionally, they were not in a position to see the complete interaction as the men were inside their truck until leaving the truck and punching Employee. Under the circumstances, the hearing officer concluded that it would be difficult to fault Employee with discourteous behavior. Additionally, there was ample evidence of threats and actual violence to justify Employee's use of force. Finally, the Department did not present any procedures or policies requiring Employee to seize the marijuana when he was not making an arrest or issuing a citation, and did not demonstrate that Employee's initial comments or contact were improper. The hearing officer concluded that Employee's actions were reasonable and complied with Department policy and procedure. The Department failed to prove by a preponderance of evidence any of the charges in Causes I-V. It is therefore ordered that the Order of Suspension be reversed; that Employee be reimbursed for back pay plus interest for five workdays, eight and one-half hours each, for a total of forty-two and one-half hours, less any amount received for employment during the suspension in accordance with this proposed decision; that the proposed decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission approve and file this report.

Motion by Newman to approve Findings and Recommendations; seconded by Dixon. Carried.

6. Commissioner Austin: Daniel Morales, S.E.I.U. Local 2028, on behalf of **Karl Rosenkranz**, Building Maintenance Engineer, appealing an Order of Suspension and Charges from the Department of General Services.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Insubordination; Cause II - Conduct Unbecoming an Employee; Cause III - Dishonesty. Employee has been employed by the County for approximately 14 years, currently holding the position of Building Maintenance Engineer. On June 29, 1994 Employee signed an Employee Occupancy Agreement which allowed him and his family to occupy County-owned housing identified as "Deer Park Residence #2", and which continued indefinitely on a month-to-month basis. In November 1999, the Department's Facility Superintendent met with Employee to inform him of the County's plan to actively pursue the sale of the property and that aggressive marketing of the property would commence on January 1, 2000. On May 6, 2000 the County auctioned the property. On May 8, 2000 the Department issued a written notice to Employee to vacate the premises by June 22, 2000. On June 27, 2000 the Department learned that he had yet to vacate the premises, and the deadline to vacate was extended to June 30, 2000. On July 1, 2000 the new lease of the Deer Park property commenced and Employee and his family still occupied the

premises. On July 7, 2000, Employee vacated his family from the residence, however he remained. On July 9, 2000 Employee moved into another Deer Park residence, sharing it with another employee who was gone on vacation. On July 15, 2000, upon the return of the other employee to his residence, Employee vacated the Deer Park property.

On August 2, 2000, the Department was assessed in the amount of \$4,333.00 due to ten days of overstay by Employee, as well as an amount of \$895.00 in connection with disposing of County refuse and waste around the property.

Employee received ample notice to vacate the premises and he periodically telephoned the Department to learn about the status of the property. Employee's conduct caused disruption within the Department and his conduct cost public money both in terms of additional staff time and reduced rental income. By a preponderance of evidence, the Department proved all charges, except Cause III. (The Department failed to prove that in staying at another employee's residence after July 9, 2000, he did not vacate the premises. He had in fact vacated the Deer Park Residence #2 as defined in the Occupant Agreement.) It is therefore recommended that the Order of Suspension be affirmed; that the proposed decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission approve and file this report.

Motion by Austin to approve Findings and Recommendations; seconded by Dixon. Carried.

7. Commissioner Brummitt: **Robert Mutch**, former Audio Visual Specialist, appealing an Order of Termination and Charges from the Health and Human Services Agency.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Insubordination; Cause II - Dishonesty; Cause III - Absent Without Leave; Cause IV - Failure of Good Behavior; Cause V - Conduct Unbecoming an Employee; Cause VI - Acts Incompatible with or Inimical to the Public Service. Employee has been an Audio Visual Specialist in the Agency since January 1996. At the hearing Employee stipulated to the following charges: challenging his supervisor in a defensive manner on 6/8/00; missing a mandatory staff meeting on 7/31/00; calling in sick by leaving a voicemail in lieu of speaking directly to his supervisor on 7/31/00 and 8/1/00; and submitting a falsified medical verification of illness on 8/2/00. The evidence presented at the hearing revealed that Employee is an individual who has a disregard for rules and authority and who is dissatisfied with his position in the Agency. The Agency proved a pattern of dishonesty that extended beyond the charges. The evidence established that he readily resorted to dishonesty to conceal or obfuscate incidents of misconduct even when that misconduct itself consisted of dishonesty. Employee was found guilty of Causes I, II, III, IV, V and VI. It is therefore recommended that the Order of Termination by the Department be affirmed; that the proposed decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission approve and file this report.

**Motion by Brummitt to approve Findings and Recommendations;
seconded by Newman. Carried.**

8. Commissioner Brummitt: Maury Mills, Esq., on behalf of **Linda Hearn**, former Deputy Sheriff, appealing an Order of Termination and Charges from the Sheriff's Department.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Failure of Good Behavior (driving under the influence of alcohol and/or marijuana); Cause II - Failure of Good Behavior; and Cause III - Acts Incompatible with and/or Inimical to the Public Service. Employee was a deputy in the Sheriff's Department for approximately 16 years and since 1993 assigned to the DARE Drug Education Unit. It was stipulated to at the hearing that a) Employee had no prior discipline; and b) admission into evidence of three documents: Driving Under the Influence Arrest, transcript of taped interview with Employee, and Rules of Conduct for Members of the San Diego County Sheriff's Department. These documents were admitted in lieu of testimony.

At the Commission hearing, Employee did not dispute the facts contained in the Order of Termination, but did challenge the level of discipline imposed by the Department. Employee offered evidence of mitigating circumstances, stating that she had been subjected to significant emotional and physical stress derived from multiple causes, including: seriously ill mother, loss of her sister-in-law to breast cancer, death of her father-in-law, difficulty with her children, overseeing the funeral arrangements of her grandmother, and physical pain from recent oral surgery. Employee had ingested pain medication for the oral surgery that caused severe nausea.

Employee testified that she smoked marijuana, only at this time in her life, to ease the stress and immediate nausea she was enduring. She further testified that the Department had failed to adequately notify her of its employee counseling programs and was under the impression that any sort of counseling offered was for job-related trauma/stress, only.

The hearing officer felt her lack of knowledge of the counseling program was unpersuasive because a DARE deputy has extensive training regarding the causes of illegal drug use as well as alternatives for coping with such causes, both physical and emotional. Although the Employee was of valuable service to the County for 16 years and her actions were the result of a single incident coming upon the culmination of several nearly simultaneous tragic events in her life, the incident is so serious that she cannot be reinstated. The Department proved all charges in Causes I through III of the Order of Termination and Charges. It is therefore recommended that the Order of Termination by the Department be affirmed; that the proposed decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission approve and file this report.

**Motion by Brummitt to approve Findings and Recommendations;
seconded by Dixon. Carried.**

9. Commissioner Newman: Frank S. Clowney, Esq. on behalf of **Thomas Eret**, former Building Maintenance Engineer, appealing an Order of Removal and Charges from the Department of General Services.

FINDINGS AND RECOMMENDATIONS:

Employee was charged with Cause I - Incompetency. Employee was originally employed by the County in February 1990 as a Building Maintenance Engineer (BME). He was on a leave of absence since October 1999 due to a non work-related car accident and on August 8, 2000 the Department received a Return to Work authorization effective September 1, 2000. During this same time period, however, Employee committed a non work-related illegal act that resulted in a conviction and incarceration. As a result of those circumstances, the Department contacted the Sheriff's Department to review its requirements for security clearances at secured facilities. The Sheriff's Department reported that security clearances for BMEs are essential and that Employee would not be allowed into secured facilities without such a clearance. The Department subsequently contacted other departments to determine their interest in employing Employee as a BME in a non-secured facility. There were no vacancies at the time and Employee could not be accommodated. The Department testified that it was not aware of any BME, current or past, who lacked a security clearance.

It was unrefuted that Employee had been an accomplished BME throughout his tenure with the County and had been a valued Employee in all respects except for the incident that caused this discipline. His desire, as addressed by his attorney at the Commission hearing, was to be assigned to a central unsecured plant where he could work on a permanent basis. His attorney had suggested that the normal rotations into such an assignment could be curtailed to accommodate Employee. The Department testified that there is no practical way to make this happen as the Sheriff's Department has the right and obligation to the public to maintain high level standards relating to security, both efficiently and effectively. All of the charges in Cause I were proven to be true. It is therefore recommended that the Order of Removal by the Department be affirmed; that the proposed decision shall become effective upon the date of approval by the Civil Service Commission; and that the Commission approve and file this report.

Motion by Newman to approve Findings and Recommendations; seconded by Dixon. Carried.

10. Commissioner Dixon: Sanford Toyen, Esq., on behalf of **Paul LaCroix**, Deputy Sheriff, appealing an alleged disciplinary reassignment with the Sheriff's Department. (Pre-hearing conference)

FINDINGS AND RECOMMENDATIONS: Continued to the next Civil Service Commission meeting.

Continued.

DISCRIMINATION

11. **James Toothaker**, Supervising Probation Officer, Department of Probation, alleging retaliation discrimination by the Department of Probation and requesting a stay order by the Commission to keep the status quo. (See also No. 16 below.)

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back. Deny request for a stay order.

Mr. Toothaker addressed the Commission relating to this item as well as item No. 16 below. He asked the Commission to consider his request for issuance of a stay order to maintain the status quo. Mr. Toothaker stated that by placing all parties concerned back into their original positions, the Department would cause less operational and morale ramifications.

William Songer, Deputy County Counsel, appearing on behalf of the Department explained that there were personnel/morale problems at Camp Barratt that the Department is trying to take steps to remedy. One of the steps is to rearrange/relocate personnel to get a different personnel mix.

Motion by Dixon to approve staff recommendation. Second by Austin. Commissioner Pate assigned.

12. **Michael Chase**, Eligibility Technician, Health and Human Services Agency, alleging national origin and age discrimination by the Department of Human Resources and the Health and Human Services Agency. (See also No. 13 below.)

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

Staff recommendation approved. Commissioner Newman assigned.

SELECTION PROCESS

13. **Michael Chase**, Eligibility Technician, Health and Human Services Agency, appealing the selection process for the classification of Social Worker I. (See also No. 12 above.)

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation addressed in No. 12 above.

Staff recommendation approved.

RECONSIDERATION

14. Todd Tappe, Esq., on behalf of **Maurice Jackson**, Senior Probation Officer, requesting reconsideration of the Commission's November 1, 2000 findings regarding the nature of Mr. Jackson's reassignment. (See also Item No. 15 below)

RECOMMENDATION: Deny Request

Todd Tappe, Esq., representing Employee addressed the Commission regarding this matter. He requested that the Commission reconsider it's decision to grant a Rule VII hearing based on the fact that his client did not have an opportunity to call witnesses at the pre-hearing conference. Mr. Tappe also requested reconsideration because he felt there was no clear policy regarding alleged disciplinary transfers.

Deputy County Counsel William Songer explained that a pre-hearing conference was not the venue to decide policy. He stated that the Department brought no charges, and therefore no one was disciplined, only reassigned. Therefore, no hearing is required.

The Commission found no discrepancy in its initial decision to not grant a Rule VII hearing.

Motion by Newman to accept staff recommendation. Seconded by Austin. Carried.

INVESTIGATIONS

15. Todd Tappe, Esq., on behalf of **Maurice Jackson**, Senior Probation Officer, requesting an investigation into the personnel practices of the Department of Probation relating to Item No. 14.

RECOMMENDATION: Deny Request

In conjunction with No. 14 above, the Commission denied Mr. Jackson's request for an investigation. The Commission maintains its position that a department has the right to reassign people due to the needs of that department.

Motion by Austin to approve staff recommendation. Seconded by Newman. Carried.

16. **James Toothaker**, Supervising Probation Officer, Department of Probation, requesting an investigation into the personnel practices of the Department of Probation relating to Item No 11.

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation addressed in No. 11 above.

Mr. Toothaker addressed the Commission on this matter concurrently with Item No. 11 above.

Staff recommendation approved.

OTHER MATTERS

Seal Performance Appraisal

17. **Steven Ruff**, Sheriff's Sergeant, requesting the sealing of a performance appraisal for the period April 7, 1999 to April 7, 2000.

RECOMMENDATION: Grant Request

Newly appointed Commissioner Newman pulled this item for discussion due to his unfamiliarity with the process of sealing performance appraisals. He requested that this matter be continued until he could have opportunity to review the rules, discuss with Commission staff, and become knowledgeable about the process, purpose and rationale of the sealing. Larry Cook, Executive Officer asked the Department whether it had any objection to the continuance of this matter. Julie Strauss, representing the Sheriff's Department acquiesced to the continuance.

**Motion by Newman to continue this item. Seconded by Austin.
Carried.**

Extension of Temporary Appointments

18. Health and Human Services Agency

- A. 2 Mental Health Case Management Clinicians (Tabatha Pickard, Kurt Robbins)
- B. 1 Protective Services Worker III (Gia Alarie)
- C. 1 Social Worker I (Miriam Partida)
- D. 1 Administrative Assistant I (Mindy Ripley)
- E. 1 Administrative Secretary III (John Clement)
- F. 1 Associate Accountant (Nenita Encarnacion)
- G. 9 Residential Care Worker Trainee (Michele Rivera, Rita Thomas, Marla Henry, Zelalem Hagos, Cherie Greiner, Yesenia Perez, Monique Miller, Carlos Alfonso, Ann Armour)
- H. 1 Residential Care Worker I (Rhonda Estes)
- I. 1 Residential Care Worker II (Silvia Williamson)

19. Department of Planning and Land Use

1 Principal Accountant (Sherry Angel)

RECOMMENDATION: Ratify Item Nos. 18 & 19.

Item Nos. 18 and 19 ratified.

20. Public Input.

ADJOURNMENT: 4:25 p.m.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE JANUARY 17, 2001.